1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

×627 instance of this method of procedure was to send the unfaithful wife herself on the onerous task of demanding damages from her lover.[4]

If the aggrieved deemed it wise to form a party to act in the prosecution of the case, he (c) took his group and sat aloofly astride his horse while his confreres laid the charge and negotiated. But he sometimes got impatient with the progress of the action and interceded himself. This led to violence. At every step, strong individual reactions threatened the proceedings.[5] It was not unusual, however, for the aggrieved to (d) send his group to carry out the whole procedure, refraining from appearing upon the scene himself. The situation is not the same as in (b) above.

Another alternative relied upon by men without war honors, lacking in

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×627 684 [4] *Case 5. Adultery: Husband collects damages through wife*
Informant: Visits Her Relatives

"A woman used to go regularly to a hill to get power. Claiming to be a medicine woman, she induced her parents to build her a special tipi in which she could go to rest when she had returned from her pilgrimage for power. This went on for some time, when her husband began to suspect that her movements were not in the interest of medicine, as she claimed. He followed her one day and found her horse down by the creek. Turning back, he went by the tipi of a young man and heard his wife's voice inside. Looking in stealthily, he saw the pair lying together.

"Feeling very wrathful, the husband went home and asked his mother-in-law to take down his wife's special tipi. She refused. He then told his sister to do it, and she could not refuse him, so she removed it.

"When the woman came home and went to rest in her tipi, she found it gone. She went to her husband to ask where her tipi was. He invited her to come into his tipi and sit beside him. When she had done so, he pulled out his knife and cut her hair off close to the scalp, then cut her skirt short. In this bedraggled state he drove her through the camp with his whip. When they came by her lover's tipi the husband bade his wife call to him to come and see her. She called, but her lover did not appear.

"Her husband then sent her to collect damages from him. He demanded six horses, a saddle, bridle, and war costume. When she appeared before the young man in her sad state he was sorry for her and said, 'You look so pitiful; you may have anything you want that I have!'

"His mother loaded his horse with all his portable belongings, and the wife led it publicly through the camp to her husband. This satisfied him, so he kept her as a wife."

×627 684 682 [5] *Case 6. Adultery, Homicide: Procedure breaks down*
Informant: Post Oak Jim

While one of the bands was out on the warpath, a man learned that his wife had committed adultery. He decided to let the matter ride until they were back in safer territory. When again out of danger the aggrieved husband went with two friends to the culprit to ask for damages.

Negotiations were proceeding amiably when the husband became impatient with the procedure and shouted, "That's no way to talk. Why don't you beat him up or kill him!"

This made his adversary so angry that he stabbed the husband dead. At that the two friends of the slain man killed the offender.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

HOMICIDE

MURDER AND RETALIATION

627 The description of proceedings thus far set forth reveals clearly enough that the native law made little effort to conceal the importance of coercion and force in its functioning. The Comanches, particularly, were a fighting people who did not fear violent action. To them *ability* to possess was "nine points of the law." Even so, it has been shown how far they had gone in modifying the primitiveness of this principle by setting up a legal mechanism of adjudication and compromise for certain offenses.

682 For murder, however, there was no adjudication or compromise in Comanche society. In the event of murder the *lex talionis* was invoked. The case was not closed until the kin of the dead man had taken the life of the murderer. There was no acceptance of composition as was the case with some other tribes of the plains.[1] Nor was there intervention and banishment pronounced by the chiefs as among the Cheyenne or the Omaha.[2]

602 682 Among the Comanches, where kin organization was weak, the principle of kinship liability was not potent enough to result in feud. In principle a simple retaliation was all that was required; the murderer must be the victim. There was no ruthless taking of life of whomsoever happened to be related to the murderer. The kin feeling was strong enough, however, to induce the kin of a murderer to do their best to protect him for some time. As long as vigilance was maintained, unless the murder led to hot-blooded vengeance on the spot, no attempt at attack seems to have been made. The avengers simply waited until time wore down the watchfulness of the protectors; then the avenging thrust was made.

There is but one case known to us in which the kin groups met in open clash. And that was a strange mix-up.

Case 13. Murder: Cooks Dried Meat vs. Püsku
Informant: Talker (Recorded by Jeannette Mirsky)

"Cooks Dried Meat had a wife. Early one morning he told her, 'We're going hunting.' After they had gone quite a way, Cooks Dried Meat told his wife to dismount. She did so. Then he took her to a tree and tressed her to it. He faced her and said accusingly, 'You and your uncle (a classificatory brother of her mother) are intimate.' The woman denied it. But he persisted, 'I saw you helping him fix his hair. You were looking for lice on his scalp.' With that he whipped her hard and then took her home.

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[1] R. H. Lowie, *Primitive Society* (New York, 1920), p. 403.

[2] A. Fletcher and F. LaFleche, *The Omaha Tribe* (Report, Bureau of American Ethnology, vol. 27, 1906), p. 215.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

"That evening just before dark the wife left his lodge and went to the tipi of her uncle. She arrived just as he and his wife were finishing eating. When they had finished their supper, they asked what might be on her mind. 'I have come to carry tales,' she said. 'Go on,' he replied. 'Well, your son-in-law, Cooks Dried Meat, accused me of being intimate with you, and he whipped me badly.' Her uncle was indignant. 'The brute, the bad thing, the devil—you shall not go back to him.' His mother and father were living in the same tipi, so he asked the woman to stay there.

"A little later there was the sound of something outside, and a voice said, 'I have come for the person who is visiting you.' 'Go home!' the uncle shouted back, 'she is staying here.' It was fall and cool enough to have a fire and eat indoors. They went to bed.

"The uncle's tipi was at one end of the encampment; the husband's was at the other. Just at white dawn a voice shouted out from the tipi of Cooks Dried Meat. 'Get ready Pítaku (the uncle). Prepare yourself!'

"It stirred a terrible commotion. Everybody woke up and asked what was going to happen and angry voices were heard. Cooks Dried Meat strode forth accompanied by his father, the aged peace chief, Tongue, and a young man. They went towards the tipi.

"Close to that tipi was one of an old man who lived with his grandson. He stuck his head out and received an arrow full in the throat. As his relatives pulled loose the shaft they cried, 'We shall wipe Cooks Dried Meat out. We shall join Pítsku to do this. Then they fired and killed Tongue. The fight was on. Pítsku got badly wounded in the rump. Hard by was my mother-in-law's tipi—a big one. Into this Pítsku scurried for shelter. Next the son of Cooks Dried Meat was killed, making two men shot on each side. Cooks Dried Meat came to my mother-in-law's tipi to get Pítsku, but the old woman warned him away. 'You don't kill him in my tent,' she threatened. 'If you do, it will not be well for you. The man of this house is a great warrior and a strong medicine man. It will go ill with you if you shed blood in his tipi.'

"By that time a group of men had intervened. 'Stop it,' they ordered. 'It is enough that two men have been killed on either side. Stop.'

"Cooks Dried Meat then fled from the camp. He was chased by the grandson of the old man he had shot in the throat, but he escaped and never came back to the band. He moved away from it.

"Pítsku died of blood-poisoning. Tongue was the peace chief. If he had not taken his son's side, it would have been his duty to have stopped the fighting."

Other acts which to the Comanche were so heinous as to warrant lethal retaliation on the aggressor were the slaying of a favorite horse, and insulting conduct which was insufferable to the aggrieved. These factors appear severally in different cases, but are combined into one single complication in a famous Comanche case known to many informants. There are slight variations in the telling, but the main points of action remain the same.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

685 One version has it that the two groups involved were members of a single war party which was returning from a long raid and split because of disagreement over how fast they should travel. Another has it that two small Comanche war parties happened to meet, and thus the action occurred. The facts as reconstructed from several accounts produce running history as follows.

Case 14. Horse Slaying and Murder: Pepper vs. Múβa
Informants: That's It, Talker

Pepper, a Comanche of the Those Who Move Often band, was returning from a successful raid with his captive friend. They were bringing home a bunch of good horses and had reached the Comanche country when they met and camped with two men of the Antelope band, Múβa and his captive friend. In the morning four more Comanches, Man's Forehead, Breaks Something, Harness and Tsiwiwta rode up. They all talked awhile before Pepper and his captive made ready to leave. They rounded up their horses, except one, which was left behind either because it was lame, or had gotten into the herds of the others.

The warriors who had stayed behind were hungry and were considering what to eat. Múβa settled it by ordering his captive to kill the horse their friend had left behind. Some say he chose it because it was better to kill a lame horse; others, because it was nice and fat. They said they would give Pepper the choice of horses when they saw him. But the meeting with Pepper came sooner than was looked for, for he began to repent having left his horse behind. He turned back to see what had become of it. He rode up on the feasting group.

"You have butchered my filly. If you wanted to butcher, why didn't you kill your own horse?"

"Yes, we have done that," Múβa agreed. "But look here, my friend, there are our horses and pack mules over there. Take your choice."

685 So Pepper rode towards the grazing beasts. He drew his bow—the men watched to see what he intended. Twang! He sent an arrow into Móβa's best horse and one ●682 into his captive's mule. With the animals writhing on the ground, he rode off.

That made Múβa angry. "What a mean fellow!" he cried. "The way he shot down those horses. Get our horses! We are going to talk to our friend." As they rode forward to catch up with Pepper, he laid out his plot to his captive. "He will strike you because you are a captive. Hit him back and fight with him. Then I will kill him."

They came abreast of Pepper and started to talk with him. Soon Pepper began to abuse the captive. "You, what did you come here for? Do you think anyone would grant your wish or give you anything? If anyone wanted to horsewhip you, is there any reason why they should not?"

"Well, try it," the captive dared.

"Well, why not?" He struck the captive across the face.

The captive slashed back. They grabbed each other's hair and rolled to the

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

ground. Múβa watched for his chance until he could shoot a wounding arrow into Pepper.

"Can't you do better than that?" Pepper cried. So a second arrow was used to kill him.

Without attempting to take the dead man's horses, they went back to where the other Comanches waited. "I have killed our friend," Muβa announced. The four who were there then mounted and went out to look for the body. They stayed a long time preparing a grave, wailing and mourning for the dead man. Múβa and his captive spent the time preparing a meal from their dead mule, which Pepper had shot.

When their friends came back from their mortuary undertakings, they ate heartily. In the meanwhile, Pepper's captive drove his master's horses into camp. There was great mourning among his master's relatives. Because Pepper had no father, a war chief named Bakamuts, a brave and respected man among the Those Who Move Often, called for attention.

"Listen to me, all!" The wailing ceased. "There is a young brave named Múβa. He is of a large household and in it are many brave warriors. It is my mind that we let this matter go; because his friend first did the wrong thing, it was not his fault. Pepper was mean to have started the fight over a horse."

Bakamuts took these steps to close the incident because both he and the Antelope chiefs were afraid that the two bands would exterminate each other. They did not want a senseless fight between their bands. Crazy Bear and another Antelope chief counselled, "Let us forget this thing which has happened. Our children have intermarried; for their sakes, let us forget it."

Thus tribal consciousness checked a possible internecine war. But note that the rationale is on the kinship basis. The Comanche had not yet reached the state of pure polity. As to the materials of the action, the murdered warrior's resentment at the butchering of his horse was rooted in the very personal nature of horses as property. Comanche horses were highly regarded and imbued with a degree of personality. It is not unlikely that the slaying of horses was to the owner close to murder and hence no light thing to compose. Two horses killed for one horse butchered is in one sense a more-than-murder retaliation. The revenge-killing of Pepper roots no less obviously in a pattern that atonement deemed ample, and freely offered, was to be accepted, not to be insultingly refused by shooting horses instead of receiving them.

The extremes to which feelings on a favorite horse could go are also demonstrated in the famed murder of Rocky Thorn by Crowding A Person.

Case 15. Killing a Favorite Horse and Murder: Rocky Thorn vs. Crowding A Person Informant: That's It

"The trouble resulted from a raid on a Comanche camp by enemies. As the raiders were making their get-away, a young boy jumped on the nearest loose horse to

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

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join the pursuit. It was a fast buckskin, the favorite pony of old man Crowding A Person.

"The boy beat everyone to the enemy and overtook and killed a raider, but the rest got away. It was the boy's first coup. It made him so eager to get back to camp and to the acclaimed glory which would be his that he overrode the buckskin until it dropped dead.

"The youth's mother went to the lodge of Crowding A Person. There she told him of the enemy her son and slain. 'But at the same time,' she continued, 'he has had a misfortune.' She told him his buckskin had died.

"The old man was angry. He said he loved that horse better than any living person.

" 'Why,' he stormed, 'did the boy have to pick on that horse when there were so many other fast ones about?'

"When he acted like that the mother got angry too. She scorned him and hurled taunting words in his teeth. 'What are you talking for?' she cried. 'You couldn't do anything. You could not have killed this enemy. You do no brave deeds. You are a coward anyhow. If you love that horse better than me, why don't you kill me, if you dare?'

"The old man slowly answered, 'Rocky Thorn, do you mean that?'

"She said, 'Yes.'

"He took up his bow and fitted an arrow. He drew the string and shot. Two times he shot her, and she was dead. Then he prepared himself to meet his end. He moved his lodge outside the village, awaiting the return of Rocky Thorn's brothers from a raid.

" 'If they are going to kill me,' he said, 'let them do it away from the camp.'

"His best friend, an old man too, joined him out there and they waited. That night the war party came in. The brothers heard, and in the morning five men, all relatives of Rocky Thorn, went armed to visit the old men. When Crowding A Person saw them coming, he entered his lodge to prepare himself. Soon he came out again, knife in hand, to advance serenely against his enemies. They started shooting immediately. And yet he was as if charmed, for none of the arrows found him. He was almost among them. Then Chew It Up put an arrow through his breast and he was dead."

Such was the operation of the law of retaliation for murder. The kin of the dead were obliged to take revenge. This is the first principle of collective liability.

A second principle of collective liability frequently expressed as to primitive law is that a group cannot proceed against itself. Hence, a wrong committed by one member of a kin group against another within the same group is said to be not punishable in the same way as a wrong done by an out-grouper.

A unique occurrence illustrating adherence to the principle was the

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

attempted parricide upon old Brown Robe. It was a notorious and most "unnatural" offense. 627x 682

Case 16. Homicidal Assault: Brown Robe vs. Crazy Bear
Informants: That's It and Visits Her Relatives

"Brown Robe was a Yɛp Eater with three wives. Two were sisters; the third was a chore wife. The elder sister had married him first and the younger had been given to him later. When he brought home the third wife, the elder sister said to him, 'I see you have a new wife.'

"Three young men were living in his household with him. They were Buffalo, who was his son by a former marriage, Crazy Bear, his grandson, child of his daughter who had died, and also Buffalo's nephew. The third young man was a captive whom Brown Robe had taken as a child, raised, and called 'son.' The two sisters each had a child by Brown Robe, but the chore wife had no children.

"One day Buffalo and Crazy Bear ambushed the old man. Buffalo shot him with an arrow. (His father had given him medicine as was customary for a father to give a son his medicine. This medicine was that of the brown bear; it gave invulnerability to bullets. A bullet won't go through a bear, except at a certain spot. An arrow will. That is why Buffalo used an arrow to shoot his father, because he knew a bullet would not harm him.) Then Buffalo ran off with the chore wife. She was not pretty, either. She was real dark. Crazy Bear ran off with Young Woman, his grandfather's younger wife. The elder wife and the captive boy stayed with the old man. He did not die from his wound, for he was doctored back to health by a medicine man. While they were out hiding, children were born to the two young men; each of them had a boy.

"Later on these couples and their children returned to Brown Robe's camp. He greeted them without malice. 'What you have done to me is forgiven. Just forget what you have done. Let us live in peace.' Everything did go smoothly after that. His former wives, who were now his daughters-in-law, treated him respectfully as a father-in-law. And when Brown Robe died about ten years later, his son and all his establishment mourned for him."

Community reaction in such a case could be only in the form of public disapproval. Legally the whole affair was a private matter. And as She Invites Her Relatives explained it, Brown Robe could not retaliate because the offenders were blood relatives. Or as Kwasi (Dr. Mirsky's informant), phrased it, "His feeling for his son and grandson over-balance the women (meaning the wrong alone). The women were of no consequence compared to his own flesh and blood." Brown Robe's receiving the whole group back was above criticism, "because he was a war chief." 627x 624

But the fact that Buffalo, his son, was also a war chief did not save him from public censure. People talked in strong terms of his conduct. When he and the others returned to the main camp, public opinion was so sharp that

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

x627 624 they had to live apart on the outskirts of the village. The social sentiment was there. A norm making a crime of parricide could have developed from it. But as it was, it remained not a matter for "legal" interference by society. Therefore murder was still essentially a wrong and only vaguely a crime.

x627 602 In case 27, p. 94–95, a young warrior slew his mother's brother because of black magic performed against his brother. The uncle was said to be putting a curse upon the youth for suspected adultery with the uncle's wife. Here were two intra-familial actions: the first, for a violation of marital rights; the second, a retaliation before the fact in anticipation of the death. In the words of the informant, however, "The quarrel was in the family, so no one else could take it up to do anything about it." This case sharply defies the supposed principle of inability of blood to proceed against blood. At the same time it resubstantiates the private nature of murder.

x627 593 682 602 Supporting and contradicting the hypothesis that action could not be taken against an aggressor within the family, is a second case of parricide in which Capture killed his father, who was a "captive white man who had grown from boyhood among the Comanches." His father had remarried after his first wife's death. The new wife was young and beautiful—and indiscreet. She took her step-son as a lover. When his father got suspicious, Capture shot him to get him out of the way. Then he fled. His flight, however, led him into the vicinity of That's It's camp. That's It was a foster relative of the dead man—through his adoption into That's It's family. That's It called him "younger brother." That's It took a party of his kinsmen to confront the murderer. "Son," he said, "for one thing I have come. It is as it is—it is done (the deed). I am taking the woman and the horses." Then the informant explained, "That's It took the horses and the woman, not as a form of damages, because Capture was his 'son': you don't collect damages from a son. He did it as a punishment, because the woman meant more to the boy than anything else."

x627 602 Taking a group of kinsmen over to divest an erring relative of his ill-gotten wife and horses was not collecting damages; it was punishing him! It had to be so, because one did not collect damages from a son. Is legal logic restricted to the civilized mind? One could not proceed against a kinsman, but one could punish him.

The truth seems to be that the "principle" itself rests on confusion. Where families or kin are the legal units recognized by the society as a whole, then *before the society as a whole or its officials* it may well be that "a group cannot proceed against itself." But there remains the self-regulation of the group. The Comanche instances show two things: that what happened

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

inside the kin group was the business of nobody outside the group; and that inside the group, the way of handling a situation depended largely on personality and temperament.

PRIVILEGED HOMICIDE

One type of killing which was not murder was the privilege of the husband to kill his wife. This is a variant of the purely in-group character of in-group friction. For this there was no retaliation. It was the acknowledged right of the man, and no one would lift a finger to legal action. Not only was the position of woman largely that of chattel, but the chattel passed from the original family to the husband. In return the obligation to provide food for the father-in-law lay on the husband. Escape for the woman lay in absconding,[3] but the number of instances in which the run-away wife was slain or mutilated by the husband is notable. In the twenty-two cases of wife-absconding collected from the Comanches the woman disputed was killed by her husband in four. Three adulterous wives were killed by their husbands in twenty-three instances of discovered transgression. Thus in forty-five Comanche cases of marital infidelity, seven women were slain at the hands of the husband or his henchmen. This is one in six.

Though the sample is admittedly too small to be *statistically* significant, and is possibly biased through selection on the part of informants, it is not without significance that eighteen percent of the adulterous wives were killed. That the statistical proportion cannot be greatly in error is buttressed in the wry observation of Rhoda Bluefoot that the wives of her father and his brothers never ran away; they were afraid of what would happen, because their men were well known as fierce fighters.

That the kinship group showed no inclination to retaliate when a husband killed his wife—their blood relative—can mean nothing else than a true relinquishing of the kinship bond upon marriage in favor of a supreme marital bond. That a father had to beg his son-in-law not to harm his daughter who had erred, and even offered gifts that her husband would not harm her (see pages 101–102) proves this.

The fact of potential marriage through sororate rights did not, however, establish the legal right of a brother-in-law to kill his wife's sister. She was not yet his wife; therefore, not his for disposal—not even when the woman was *also* the wife of the slayer's brother, giving thereby additional *expectant* rights through the levirate. The Comanche captive, Lost, met his death for killing the sister of his wife, who according to She Invites Her Relatives, ——— was at the same time the wife of his brother.

[3] Women informants used by Dr. Mirsky held that household sabotage was the easiest way out. A woman could shirk her duty until her husband threw her out in disgust.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

was at the same time the wife of his brother. But when a son-in-law gave personal offense to a parent-in-law, it was possible to order dissolution of the marriage.

Case 17. Murder of Sister-in-law: Lost vs. his nephews
Informant: Post Oak Jim

"Once some white men caught some Indians and held them prisoners. Those that were left were short of food. There was a Mexican captive who went to a girl and said that if he could get a horse he'd buy something for them to eat with it. He wanted to take the best horse. The girl bawled him out. 'There are plenty of horses, and I don't want to take the best.' She said she didn't want to give it to this crazy Mexican. After that he wanted to make up again, but they sent him off. He was interpreter for the Indians at that time.

"The Mexican went up to his wife. He wanted to know where his bow and arrows were. He took them and went up to the woman who owned the horse and killed her. Four of her sons were gone. After she died, her people cried and cried, and buried her out on the prairie. All the rest of the Indians had it in for the Mexican, but they didn't know what to do about it. The Mexican was a medicine man and a war chief. The four boys got back. The others were crying for the dead mother. The boys told them to be quiet for a while. They said they were not going to cry until they finished everything. The Mexican's wife told him his nephews were back. His wife was the dead woman's sister. The sons did not eat. They got several men, and told them what they were going to do.

" 'We're just going to keep still about it for awhile. We'll find out all about it. This man is a medicine man, and we'll try to take away his medicine. Early in the morning we'll pack up and leave.' In the morning the men and the four boys got their guns and got ready to start.

"The Mexican had his horse tied up. There were eight men with the boys. The Mexican untied his horse, saying, 'They won't come.'

"His wife was all anxious and nervous. She said, 'Lost, what are you going to do? Your nephews are coming.'

"He said, 'I've no need to be on horseback to fight them. They are just like women.'

"They came around the tipi, calling, 'Come out, you are nothing but a coward.' As soon as he came out one of them shot him, and they went on. His wife didn't know what to do. He was dying; blood was just pouring out. There was one medicine man there, but he didn't have much power. The following evening he was doctoring Lost, but he died. The wife came down to camp the next morning. Nobody did anything to the boys. They had it in for him, killed him, and that was all. Lots of people were glad. He was real mean. Chew Up was the man who killed him."

It is not likely in this instance that the fact of Lost's being a captive laid him open to attack where a full-blooded Comanche would not have been.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

He was a medicine man and a ranking war leader, which meant that he was perforce a man of status, even among the tribal full-bloods. 627 x 682 ● 602

In spite of the legal right of a husband to kill his wife, it should be noted however, that from a general social point of view, a man who killed his wives too recklessly was considered mean by the people; yet if he were insensitive to such disapproval, and particularly if he were brave enough to maintain his status through *coups*, there was little to prevent him from being as free a Bluebeard as he wished—except that wives became harder for him to get.

Attempts of wives on the lives of husbands were rare. The one case, given by Talker, is interesting for its many facets, and significant for its outcome. It shows that given time to let the revenge feeling cool, coupled with a recognition of provocation to kill, certain murders might be overlooked.

Case 18. Murder: Wife destroys husband
Informant: Talker (Abstract of History recorded by Jeannette Mirsky.) 627 x 682 593

The husband had been abusing his wife in attempts to force a confession of unfaithfulness from her. One day when he had prepared a fire over which to roast her, she seized and stabbed him and cremated him on the pyre he had intended for her torture. Then she fled for many days to the west until she met Ute Indians. There she was adopted as a wife and lived for a season or two. Then she told her entire story, ending, "and then I threw his body on the fire that had been prepared for me. Because both my husband and I have many relatives on both sides, and because I feared a conflict between the two families, I started out so that there might be no trouble between the two families."

Later she escaped and returned to her people. She repeated the whole episode to the dead man's father, and as she finished, all her relatives burst forth in a great wail for the man whom she had slain. But there was no trouble. The dead man's father announced, "Because my son was so mean to her, and because I had tried to talk to him, and he would not listen nor heed my word, and because both our families are respectable, to do anything at this late date would be unbecoming."

Thus there was no feud, no retaliation.

ACCIDENTAL HOMICIDE

Though the Comanches were more rude than other Plains tribes in their failure to recognize composition for murder, they showed more perceptive discrimination than most primitives in drawing a clear line between murder and accidental homicide. Intent to assault was a necessary feature of murder. A clearly defined case illustrating this principle was given by White Wolf. 627 x 672

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

"As soon as they started to carry out the corpse, Chew Up followed after them, repeating his warnings to his aunt. 'Don't wail,' he commanded the bereaved woman. 'If you wail for him, I will kill you. Go bury him, and when you have done it, go back to your own people.'

"The evil medicine man was buried unmourned.

"That night Chew Up himself went to stay with his elder brother. The young man was so sick that he could drink no water—always the sign of a person at death's door. All night long Chew Up held his brother in his arms, until—just as the white dawn came—he died. They wailed for him, and they mourned. The father of Chew Up was a war chief and a rich man. Chew Up explained, 'I am but following the pattern set by my father.'

"What lay behind it all was this: the medicine man uncle had caught his nephew lying with his wife—not in actual intercourse, however. For this reason he had put the curse on him. *Because the quarrel was in the family, no one else could take it up or do anything about it.* (Author's italics.)

"Just as all this quieted down, Chew Up's other elder brother came home from war. (Chew Up was the youngest, the one who died was the middle brother.) The eldest brother admonished Chew Up. 'You have committed the unheard-of thing: you have killed our uncle.'

"And Chew Up replied, 'Is it as nothing that I should sit and watch my brother being murdered? Should I have done nothing?'

"To this his elder brother retorted, 'You have done something terrible. You shall not live long.'

"Chew Up answered back, 'I am going to live a long time.'

"The elder brother was killed not long after, and Chew Up lived to be an old, old man."

The thing that strikes hardest in this history of Chew Up is the way in which it emphasizes so completely the non-criminal nature of homicide. But it is also breath-taking in how fast it moved through the ordinary middle-stage of beseeching the sorcerer to remove the curse. "You are a medicine man, why don't you doctor him?" Not an entreaty, but a sarcasm. Then the death-blow. Here the sorcerer faced a tribal strong-man, a man of wealth and position with the pattern of family pride to uphold. How differently the law worked with such a man on the aggrieved's end of the stick than when it was put in the hands of Salt Worn Out to wield for justice's sake!

Comanche law, because it was a personal and a kin law, *did* swing upon valor and guts. It was a matter of out-weighing whatever power the offender had on his side. In cases of sorcery this was usually done in the attempt to throw counter-medicine into the scale. But unless the counter-medicine was stronger in its supernatural power than the medicine behind

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

587 brother's daughter naturally belongs to the same clan as her father's sister. Such marriages are nothing more than the extension of the sororate to a lower generation and, like the levirate and sororate, they function to keep the bond between two families or marriage groups firm when one of the links has been snapped. In at least one Comanche instance, recounted by Slope, such a marriage was made for this explicit reason. The widowed husband was said to be a very good man, and his brother-in-law wanted to keep him in the family. As he had no other sister, he gave him his daughter instead. Previously, the widower had been his *haints* and they had joked as brothers-in-law do. Now brother-in-law had become son-in-law to his friend, and they both changed their behavior and address terms to the more circumspect relation required of son-in-law and father-in-law.

582 Avowedly a man could also marry his stepdaughter, but we have
●682 no examples of such marriages. So, too, he could marry his stepmother when his father died, but not his real mother. In the heinous case of attempted parricide of Old Buffalo, who had three wives, his son and grandson shot him and ran off with the two wives from whom they were not descended. They were ostracized ("people didn't like it") and had to live on the edge of the camp, but not so much for marrying the stepmothers as for their attempt on the life of their father and grandfather.[19]

582 Marriages between persons of any degree of recognized genetic
591 relationship were absolutely forbidden. Most marriages took place within the band; hence, a couple lived customarily in the same group as their parents. The groom brought his wife to his private lodge, which was set near that of his parents, and there they were likely to live until a growing family made a larger dwelling necessary. Since residence in inter-band marriages was more often virilocal (residence in the locale of the husband), children usually belonged to the band of the father. When, however, a man took a first wife from another tribe, he generally went to live with her, since his own tribe held him in light esteem afterwards.

606 The bride's mother with other relatives and friends of the couple ordinarily helped the couple get started housekeeping. She helped make much of the furnishings and possibly a new tipi. There was no

[19] Informant: She Invites Her Relatives.

The Comanches

627 hair off short. She embraced his body and wanted to throw her jewelry away in mourning. But the people pulled her away, telling her to keep it in remembrance of him.

Red Crooked Nose and his champion rode up and mourned him. Then he was wrapped in blankets and buried. The camp broke up and continued on its way.[15] » » »

In a few rare instances an inversion of the institution of the champion was employed, as in the case of the husband who was so afraid of the warrior who stole his wife that he sent an *old woman* to try to get his wife back for him. The absconder said he was going to keep the woman, but he sent back a horse loaded with goods in her place.[16]

Whether by force or by insinuating himself upon the grace of the great aggressor, Comanche law and custom guaranteed compensation to a husband, if not necessarily the return of his wife.

627 ● 682 For murder, however, there was no adjudication or compromise. Indeed, the murder of a fellow tribesman was most unusual, but it sometimes happened. In such an event, the *lex taliones* was invoked; the punishment of the murderer was primarily the concern of the murdered man's relatives. The case was not closed until the kin of the dead man had taken the life of the murderer. But the privilege of a revenge killing might not be recognized by the kin of the murderer. Kinsmen could legally strike back.

However, kin organization was weak; the principle of kinship liability was not sufficiently pronounced to result in feud. There was no ruthless taking of life of whoever happened to be related to the murderer. The kin feeling was strong enough, however, to induce the kin of the murderer to protect him for some time. As long as vigilance was maintained, an attempt on the life of the murderer was unlikely, for legal right usually gave way to determined resistance. In actuality it was extremely unlikely that a murder resulted in a deadly clash between groups of kin. Tribal consciousness checked a possible internecine war. But note that the responsibility for obtaining justice rested with the relatives and friends of the dead. This is the first principle of collective liability.

[15] *Ibid.*, 62–63.
[16] *Ibid.*, 53.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
NO6 Comanche NO6

A group might intervene to stop a fight, yet it had no legal authority to do so. The offended party, if disposed to compromise, had the privilege of accepting a commutation and releasing the murderer, according to David G. Burnet's observation in 1824.[17] This was seldom the case, however, and by mid-century, if our informants are correct, it was out of the question. Comanche law was hardening through the decades in this one respect. The murderer might flee the camp to another band and thereby escape vengeance for an indefinite period, if he was lucky. Whether or not any kind of settlement was reached, the man who had done the killing was usually more or less ostracized by his fellows. It made no difference how prominent the man might have been or how good his family, should he shed the blood of a fellow tribesman, a stigma was cast over his family and his relatives shared in the disgrace. The matter was not only talked about, but might even blight the lives of his children after his death.

Those who committed murder were often men of great bravery whose success in war and whose standing in the tribe had made them somewhat arrogant and impatient of those who did not do as they demanded. Other men committed murder in revenge.

In Comanche law the killing of a murderer by the kinsmen of the victim was a privileged act. *It did not lead to feud.* A killing called for a counter-killing. And there it stopped. The society at large and the kin of the murderer also recognized and granted the privilege-right of the execution of the murderer by the hand of his victim's brothers. This made it a truly legal sanction. No single case contravening this norm in action is remembered by any Comanche informant. The Comanches in this remarkable (in the light of the usual feudal tendencies of primitives) self-imposed restraint raised this aspect of their law to a higher than ordinary level for people of their general cultural attainments.

Favorite horses were so endowed with personality that killing a man's favorite horse was akin to killing his brother. The owner might, and sometimes did, kill the horse-slayer in return.[18]

A wrong committed by one member of a kin group against an-

[17] Burnet, "American Aborigines, Indians of Texas," *loc. cit.*, Vol. I (May 15, 1824), 154.

[18] Cf. Hoebel, *The Political Organization and Law-Ways of the Comanche Indians*, 68–72.

21: Burnet T-5 (1818-1819) 1954 NO6 Comanche NO6
Texas

[ca. 1818] 000

auxiliary to an otherwise impotent authority. The pains 175
and penalties of their criminal laws, are confined almost 562
exclusively to the weaker sex. The incontinence of a wife, 175
is punished by cutting off her nose. This odious abscission 684
is made from the junction of the cartilage and bond, obliquely down to the lip. Several instances of this shocking penal infliction are now extant. But the sentence of mutilation is sometimes remitted in consequence of the interposition of male connections. The decisions of the law always 696
yield to a determined resistance.

If one man wantonly kills another, the nearest friend 175
of the deceased, is permitted, and indeed it devolves upon 627
him as a duty, to revenge his death, by taking the life of 682
the murderer. But the price of blood, may be commuted for articles of more value and convenience than blood, and murder may be atoned for, and the spirit of revenge appeased by liberal donations to the living relatives of the deceased. Such atrocities however, seldom occur. Notwith- 175
standing the extreme laxity of their whole economy of gov- 571
ernment, and their entire exemption from legal restraint, they live together with a degree of harmony that would do credit to the most refined and best organized societies. The 175
little bickerings and jealousies and inordinate strivings for 578
thrift and distinction, that disquiet and mar the social circles of refinement, are unknown to the rude and simple children of nature.

The Comanchee system of religion is about as perfect 175
and luminous as that of their jurisprudence. They believe 771
in a Supreme Being, and in a future state of existence, but
have adopted no mode or manner of worship. Indeed they 175
consider the Supreme Being, to be so far removed from them 771
as not to wish to interfere directly, in their temporal con- 776
cerns, and as equally unwilling to be interfered with. They [775]
therefore leave him to enjoy his repose without molestation, and expect the same indulgence for themselves. They have no idea of a special superintending Providence, or that the Great Spirit takes any particular cognizance of the actions of men. And they consequently defer all their devotional 175
concerns, if indeed they entertain any, to a dark futurity, 771

22: Dacus Q-3 (no date) 1960 NO6 Comanche NO6
(ca. 1870)

622 624 554 authority is measured by the amount of wealth he may possess and his reputation for courage and skill in war.

624 701 The authority of their war-chiefs often terminates at the conclusion of a single expedition, their official term expiring by limitation.

623 Once a year they have a general council, at which they settle disputes between rival warriors, make regulations and discuss matters pertaining to the welfare of the people. In this council all warriors are entitled to [622] participate, which means, all the grown up men of the tribe. Occasionally a warrior of great wealth, that is the owner of many ponies, and of great personal prowess, will exercise a sort of chieftaincy for many years together. But such instances are rare.

623 203 The council frame certain rules, sanctioned by custom, and not in contravention to the will of the majority, and these are proclaimed by a chief man, who rides among the lodges, pausing at convenient points to recite the law in the hearing of all the people.

673 685 684 Theft, adultery and murder are the cardinal crimes, and for the punishment of these offences, custom has established precedents which have all the authority of a written code. For the first, the offender may satisfy justice by restitution and additional gifts. The second is a crime which, according to Comanche law, men are incapable of committing. The woman guilty of this offense may be punished by castigation, mutilation, or the infliction of the death penalty, at the will of the husband. Her paramour, 682 however, if disposed, can placate the husband by presents. For murder, the penalty is death. The friends and relatives of the victim would disgrace themselves by compounding the felony. They are constituted the avengers, and invariably put to death the criminal, if they can find him. 673 These are about all the offenses cognizable by the Comanche code.

538 THE COMANCHES ARE GREAT STORY-TELLERS. In the mild autumn evenings they gather about the lodges in groups of five or six, and each one endeavors to surpass the others in marvelous stories, either of his own 538 adventures or those of some other person. They have a series of fables, 177 probably obtained from the Spanish Jesuit missionaries, who it is known visited them almost two centuries ago, which they term the "Talks of the [797] Liar." The Comanche name for liar is *esop*, which considering the striking [175] similarity between the "Talks of the *Esop*-Liar," and the fables of the Greek confirms me in the opinion that a majority of the lodge-fire stories of the Comanches are but modified versions of the fables familiar to every school-boy who is set to learn another language than his own. In these fables the fawn is substituted for the lamb, the bear for the lion, the coyote

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

to several violent privilege-rights. A married woman could be wholly at the mercy of her husband's whim. He was free to extort from her a confession, as well as the name of her lover, by use of the cruelest third-degree methods. He either choked her until she gasped out the required information, or he took her out to a spot some distance from the camp where he built a fire over which he slowly lowered his terrorized wife until she gave him the information he wanted.

More refined men put the matter in the hands of the Sun and Earth. They took their wives to a lonely spot for *taβ βekat*, "sun killing." The suspecting husband filled his ceremonial pipe and smoked to the great powers, addressing first the sun. "You, Father, know the truth of this matter. As you look down upon them don't let them live until fall." Then to the Earth he said, "You, Mother Earth, as you know what is true, don't let them live a happy life on you."

Thereupon the wife smoked the pipe and avowed her innocence with an appeal to the Sun and Earth to kill her if she lied. Comanche dogma has it, and supporting cases are offered, that when women made this ritual conditioned curse, the Sun knew if they were guilty, and it killed them. Its penalty for perjury was death.[6]

Women, for their part, had no demand-rights against their husbands that they be faithful in marriage; they could exact no penalties from them. Hence, they had no opportunities to put their husbands to the test. But in recent decades some did turn the tables by demanding of the Sun and Earth, when they took the oath, that the powers kill the husband if the wife were innocent of the act.

Finally, it should be noted that when the issue was put to the Sun and Earth, no legal action against the corespondent followed. The death of the wife ended the matter.

On the other hand, the collecting of damages from the offending male did not necessarily absolve the wife. If her absconder was strong enough, she had a good chance of escaping her husband's ire. But she ran terrible risks. In seven of forty-five Comanche adultery and wife-absconding cases the women were slain by their husbands—one in seven! Three of these were adulteresses; four were absconders. Of the twenty other adulteresses five were mutilated by their husbands; four had their noses cut off, and one had the soles of her feet slashed so she could not walk.

One may wonder that any Comanche woman played the game against such odds. We see it as additional evidence that mere severity of the law is not enough by itself to make people behave.

The Comanche law of murder was most simple. For a Comanche husband to kill his wife—with or without good cause—was not murder.

[6] Hoebel, *Political Organization and Law-ways*, pp. 90–91.

29: Hoebel E-4,5 (1933) 1969 N06 Comanche N06

682 It was an absolute privilege-right, which not even her family would move [593] to challenge.

On the other hand, for one Comanche male to kill another was never 682 a privilege-right, even when applying force to an over-stubborn defendant. 627 Any willful killing required a revenge killing of the slayer. Here was the fatal weakness of Comanche law, as indeed of so much primitive law. The culture provided right ways of procedure and defined the substance of 602 tortious acts. But the primacy of the kin group came to the fore whenever 682 a prosecutor felt he had pushed negotiation as far as it would carry and then had taken recourse to arms. The kin of the defendant whom he had 627 killed did not accept the killing, although general public opinion may have held that the victim had it coming to him. The Comanche kinsmen took revenge on the prosecutor regardless of the rightness of his original grievance. In enforcing the law he lost his life, a victim of *lex talionis*.

However much Comanche law fell short in this respect, custom [578] remedied the defect in another. Blood-revenge killing was only of the first killer and retaliation did not lead to feud. The kinship principle, while extant, was nevertheless weak among the Comanches, and general fighting within the tribe was not to be countenanced when there were always outside enemies to be confronted. The killer, and the killer alone, had to die. There it stopped. No religious sanction, no tribal authority, was necessary to suppress the feuding tendency. Custom was sufficient restraint, and in this the Comanches were fortunate, for thereby they escaped the self-renewing curse that plagues so many primitive law systems.

Willful killing of a man's favorite horse was an act akin to murder, 685 especially if the horse had been bequeathed to him by a best friend. Re- 627 taliation was taken not in killing the favorite horse of the transgressor but [825] in slaying the transgressor himself. A favorite horse had a legal personality and was equated with a human being. Consequently, no further blood revenge followed, for things were already equal: a man for a horse.

787 Every Comanche male at one time or another went on a vision quest in search of power. He did not abase himself before the supernatural spirits or masochistically mutilate and torture himself to arouse their compassion. 776 Nor did he weep before them to arouse their pity. Unlike the tribesmen 789 of the Plains to the north, he assumed that the spirits were generally benign toward him; they needed no coaxing to share the benefits of their power with him. If he fasted and waited in a lonely place, they would help him. 776 Nor did they interfere in his daily living except as they put conditions on the use of the power they gave him. A Comanche had to observe no super- 784 natural tabus save those that went with his own personal medicine. Under 756 Postulate VIII, most Comanche medicine men used their powers to help 789 the people. They cured and used their medicine to bring success in war and the hunt. They even, for a contractual consideration, helped others

A [See category 181, p. 69--Analyst]

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

to get a share in their power. Although they were paid for their healing efforts, they did not attempt to milk the public or use their supernatural potency for exploitative purposes. Comanche magic was mostly white.

Occasional older medicine men, however, became "mean medicine men." Unable any longer to maintain their prestige by war prowess, they struck out at enterprising youngsters. They shot their medicine into them. The detection of sorcery was the job of a curing medicine man. In the first instance, after diagnosing the nature of the illness and who caused it, he always tried to effect a cure with a counter medicine. If he was successful, nothing more was done. If he failed, legal action was in order. The brothers of the sorcerized victim would call upon the sorcerer to remove the curse. If he refused, which he usually did by denying that he had anything to do with the affair, they could move to an attack with weapons or the threat of such an attack. But whether they did or not depended upon their strength of character. In sorcery cases where the aggrieved party was a weakling (and apparently not backed by brothers) there was no prosecution; and one Comanche, Salt Worn Out, even shifted to another band, to get out of the sorcerer's sphere of influence.[7] In one instance where the aggrieved brothers started an apparently forceful prosecution, they backed down when the sorcerer put up an even more forceful defense—a threat of *more* sorcery.[8] In the event both parties took equally strong positions, one accused sorcerer took a voluntary conditional curse on the sun—and was killed by lightning the following spring. Thus he paid the price of his guilt.[9]

In another instance the alleged sorcerer was forthwith stabbed and killed by his own sister's son, the brother of his victim. The slayer's elder brother was appalled by the act. But Chew Up, the knife wielder, retorted, "Is it as nothing that I should sit and watch my brother being murdered? Should I have done nothing?" And here there was no blood revenge in counteraction, "Because" in the very words of a Comanche, "the quarrel was in the family, no one else could take it up or do anything about it."[10] Homicide was not legally a tribal or public affair.

The cases in general indicate that the Comanches preferred not to tangle with sorcerers. A cure by a good doctor was much to be preferred. This failing, a kinsman did not have to prosecute as did a cuckolded husband, but he legitimately could, if he had the guts. Otherwise the individual act of sorcery went unpunished. Brave warriors as champions at law did not enter these cases. A warrior outfacing another warrior was one thing, but to have to threaten a sorcerer was not an inviting prospect for even the bravest.

[7] Hoebel, *Political Organization and Law-ways*, case 25, p. 92.
[8] *Ibid.*, case 24, p. 91.
[9] *Ibid.*, case 23, pp. 89–90.
[10] *Ibid.*, case 27, pp. 94–95.